

Applicant: Schwartz et al.
Application No.: 09/706,508

REMARKS

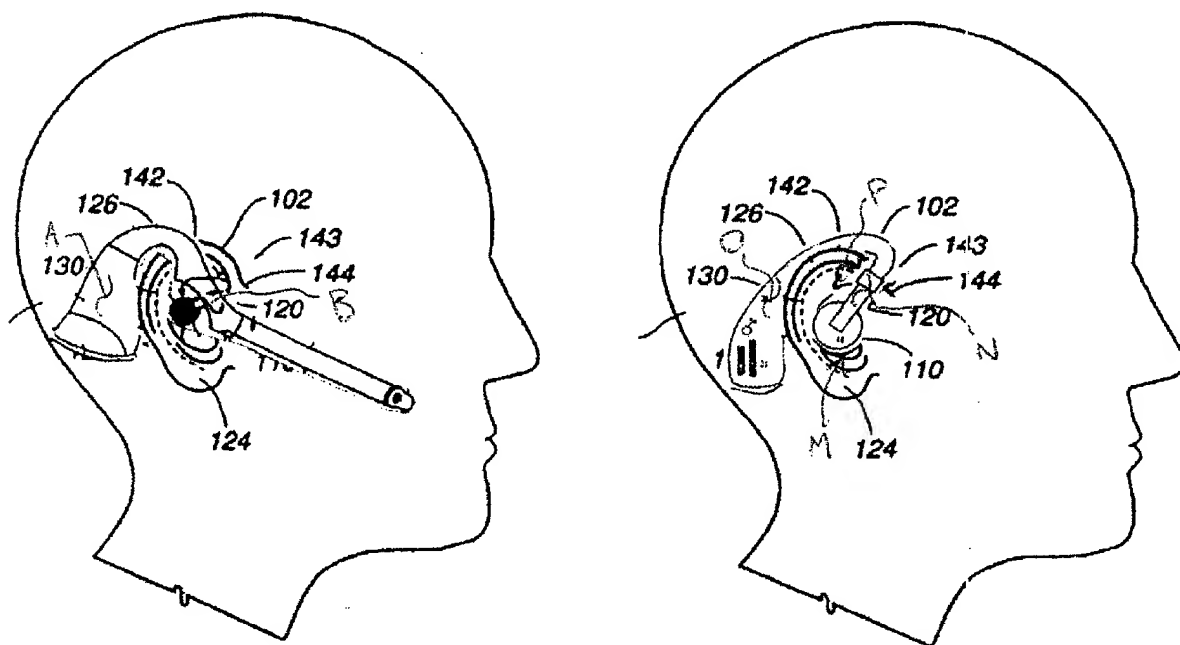
In the final action, claims 1, 4-5, 11, 13, 15-17, 21 and 23 were rejected under 35 U.S.C. §102(b) as being anticipated by GB 2214740 (Edmonds); claims 2-3, 6-9, 12, 18-20 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Edmonds; claims 10, 14, 22 and 26-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Edmonds in view of 2002/0094787(Avnet et al.); claims 38 and 40 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,230,029 (Hahn et al.); claims 38-39 and 42-44 were rejected under 35 U.S.C. §103(a) as being unpatentable over Edmonds in view of Hahn et al.; and claims 41 and 45-49 were rejected under 35 U.S.C. §103(a) as being unpatentable over Edmonds in view of Hahn et al. and further in view of Avnet et al.

With respect to the rejection of claim 38 as being anticipated by Hahn et al., applicants provide the following. Claim 38 recites both "a component configured to fit in a concha portion of the listener's ear..." and "the housing configured to be substantially supported by a pinna of the listener's ear and containing substantially all other components of the communication device other than the speaker." Hahn et al. does not disclose, teach or suggest either of those recitations.

Although at first glance the embodiment of the invention as illustrated in Figure 3A may have some similarities to Figure 3 of Hahn et al., there are some distinct and important differences. Please note that during the August 13, 2004

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interview, the Examiner drew applicants' and applicant's agent's attention to Figure 3 of Hahn et al. These distinctions are best illustrated when the two apparatuses are worn, as illustrated as follows (Hahn et al., Figure 3 on the left and Figure 3A of the present application on the right).



As illustrated, the apparatus of Hahn et al. has a speaker on an arm-like member which pushes against the wearer's ear. The arm extends over the top of the ear and a housing is between the ear and the head (and behind the ear when viewed face-on), which pushes outward on the ear.

The configuration of the Hahn et al. apparatus is described at col. 5, lns. 16-23, as follow: "... the user would deform the ear hook portion 12 [A] towards the

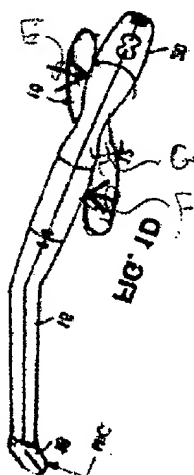
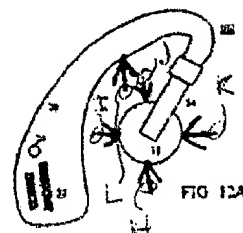
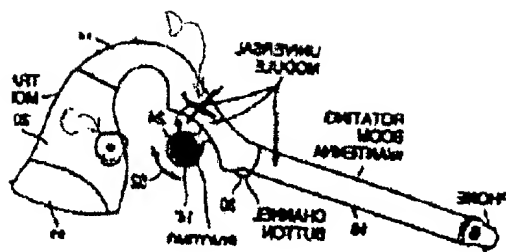
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speaker module 14 [B] in order to clamp the pinna of the user's ear between the ear hook 12 [A] and the speaker module 14 [B] and thereby fasten the wireless headset module 10 to the user's ear." Emphasis Added.

Hahn et al. also specifically describes the embodiment of Figure 3 similarly at col. 5, lns. 47-52 as follow: "the speaker module [A] can be movable in two or three dimensions as viewed in FIG. 3 to thereby shorten or lengthen the distance between the exterior of the speaker module 14' [A] and the edge of the ear hook 12' [B] in order to clamp the pinna of the user's ear between the speaker module 14' [B] and the ear hook 12' [A]." Emphasis Added.

This clamping can be illustrated as follows (Hahn et al. on the left and the embodiment of Figure 3 on the right):

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As illustrated by the arrows (E, F) and "X" (D) and circle (C), the Hahn apparatus is held by clamping the user's ear (G). In the top left illustration, the "X" (D) indicates an into the ear push of the Hahn speaker arm and the circle (C) indicates an outward pull of the housing against the ear, creating the clamping action. The lower left illustration shows the ear holding the Hahn apparatus in place by exerting a force into the housing (arrow E) and outward (arrow F) against the arm, by the clamping action of the speaker module/arm and housing. Please also note that in the top view of the Hahn reference that the speaker is not visible, as it is in line with the arm.

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The embodiment of Figure 3A of the present application illustrates that the portion of the communication device (illustrated as a circle) extending into the concha is held in place by the concha (M) in all directions (arrows H, I, J and K). The housing is supported as shown by an upward arrow (L) by the pinna. As shown on the right illustration on Page 11, a portion of the communication device fits in the concha (M), when worn. An arm (N) goes to the front portion of the ear (P), when viewed face on, and the housing follows along the ear/head connection. When worn, the pinna of the ear supports the housing from falling, as indicated by the up pointing arrow (L).

Claim 38 recites "a component configured to fit substantially in a concha portion of the listener's ear." Webster's New World Dictionary, Third College Edition © 1988 by Webster's New World ("Webster") defines the concha as "the hollow of the external ear". Clearly, the Hahn apparatus does not have any component fitting into the concha or, in particular, "fit substantially in a concha". The speaker of Hahn is in line with the arm, which allows the speaker module to clamp the pinna, as described in Hahn et al. The clamping is essential to hold the Hahn apparatus in place.

Also, claim 38 recites "... the housing configured to be substantially supported by a pinna of the listener's ear..." Webster's defines support as "to carry or bear the weight of". As illustrated on page 11, right illustration, the pinna of the

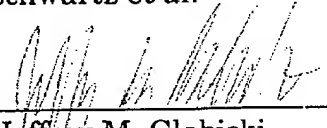
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ear bears the weight of the housing. With respect to Hahn, the pinna does not bear the weight of the housing. As illustrate on page 11, left illustration, the housing falls behind the ear (from the perspective of looking into the face of the wearer). Any contact with the pinna is minor. The housing and the speaker module/arm form a clamp on the ear, which keeps the Hahn apparatus in place. Webster's defines clamp as "to grip, fasten, or brace with". The Hahn apparatus grips the ear. The device of claim 38 is supported by the ear pinna. None of the other references cure this lack of teaching of the Hahn et al. Since the remaining claims depend upon claim 38, these claims are also allowable.

Reconsideration and entry of this amendment is respectfully requested.

Respectfully submitted,

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